

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

CHIEF HEARING OFFICER DIRECTIVE

DOCKET NOS. 2019-224-E and 2019-225-E ORDER NO. 2021-76-H

JUNE 11, 2021

CHIEF HEARING OFFICER: David Butler

DOCKET DESCRIPTION:

South Carolina Energy Freedom Act (House Bill 3659) Proceeding Related to S.C. Code Ann. Section 58-37-40 and Integrated Resource Plans for Duke Energy Carolinas, LLC

South Carolina Energy Freedom Act (House Bill 3659) Proceeding Related to S.C. Code Ann. Section 58-37-40 and Integrated Resource Plans for Duke Energy Progress, LLC

MATTER UNDER CONSIDERATION:

Renewed Motion to Strike of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC

CHIEF HEARING OFFICER'S ACTION:

At the beginning of the merits hearing in these Dockets on April 26, 2021, the Commission heard oral arguments on an Objection and Motion by Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (together, "DEC and DEP" or "the Companies") to strike certain pre-filed surrebuttal testimony and exhibits from various "clean energy intervenors" in the case. The Commission, through the Chairman denied the Motion to Strike but also stated: "...in a hearing, all motions may be renewed." (emphasis added) *See* Tr. Vol. I, p. 22, ll. 1-4. On June 9, 2021, the Companies filed their Renewed Motion to Strike, and correctly stated "the ruling expressly allowed for a renewal of the Motion." However, the problem is that DEC and DEP waited until more than a month after the hearing was concluded on May 5, 2021 to renew their Motion. For this reason, the Renewed Motion to Strike ("the Renewed Motion") is untimely, and must therefore be denied, because of the reasoning as outlined below.

First, the Chairman was very specific in setting a timeframe for the renewal of motions in these proceedings. He stated "in a hearing, all motions may be renewed" (emphasis added). Id. The Companies did not renew their Motion to Strike during the hearing, but, again, waited more than a month after the hearing concluded to do so. For this reason alone, the Renewed Motion must be denied as untimely.

However, even if the Renewal Motion is construed as a Petition for Rehearing or Reconsideration of the Commission's denial of the original Motion to Strike, it is untimely. S.C. Code Ann. Section 58-27-2150 (2015) allows a party ten (10) days to request rehearing or reconsideration of a Commission decision. Accordingly, DEC and DEP would have had

ten days from April 26, 2021, or until May 6, 2021 to file their Renewed Motion. Again, the Renewed Motion was filed on June 9, 2021, and was therefore out of the statutory timeframe allowed for the filing of Petitions for Rehearing or Reconsideration.

Further, even if the Renewal Motion is construed as a post-trial motion, it is likewise untimely. Again, the hearing concluded on May 5, 2021 and the Renewal Motion was filed on June 9, 2021. There was a 35-day gap in between the two dates. Post-trial motions must generally be made within ten (10) days of entry of a decision. See Rules 50 (e) and 59 (b), SCRCPP. So, the Renewed Motion does not qualify as a timely post-trial motion.

In summary, the Duke Companies did not follow the Chairman's instructions in filing its Renewed Motion to Strike, in that the renewal did not come during the hearing. The Renewed Motion to Strike is therefore untimely. Further, even if the Commission construed the Renewed Motion as a Petition for Rehearing or Reconsideration, or as a post-trial motion, the Renewed Motion would also be untimely. Accordingly, the Renewed Motion to Strike is denied as untimely.